

## **Association of Legal Professionals (ALP)**

March 23, 2011

Ms. Gina Donnelly  
Office of Employee Relations  
City of San Jose  
200 East Santa Clara St.  
San Jose, Ca 95113

RE: City's Package Proposal "A" to ALP and ALP Counter-Offer

Dear Ms. Donnelly:

The Association of Legal Professionals has received and considered the City's Package Proposal "A" and, for the reasons stated below, ALP hereby rejects that proposal.

This letter also sets forth ALP's comprehensive proposal, as further described below. ALP understands that the City's finances are strained during this economic downturn. In fact, ALP was the first bargaining unit in last year's negotiations to reach agreement with the City by offering reductions equivalent to more than 13% of ALP members' base salary. This was our effort to help the City meet its stated budget reduction targets.

The City has provided many memos setting forth the City's position on the background and status of the recent negative impacts to the City's budget, in particular, impacts to the City's general fund (which amounts to approximately one-third of the overall City budget). The causes for these budget impacts are generally stated to be due to (i) the City's high level of residential vs. commercial land use, resulting in relatively high cost of City services compared to tax revenue, (ii) further reduction in City revenues during the economic downturn, (iii) losses in the City's pension investments in 2007/2008, (iii) increased costs for health care plans and (iv) the City's long term underfunding of benefits promised to City employees (retiree healthcare and pension benefits).

As a bargaining unit that represents approximately only 35 employees, whatever ALP may agree to will have little effect on the overall budget; nevertheless, as we have done in the past we will do our part to help the City tide the current economic downturn.

Furthermore, there is reason for some optimism. The asset values of the City's pension funds have recovered from the investment losses in 2007 (as shown in latest investment reports on the website of the Federated and Police and Fire

Retirement Boards). Also, economic indicators show that the US economy is on the rebound, although we all understand that a full turnaround will take some time.

### **Rejection of the City's Proposal – Reasons**

#### ***1. City's Proposed Concessions***

With regard to most of the City's economic proposals, the City negotiation team could not or would not attempt to assign an economic value, nor would the City demonstrate how the proposal assisted the City in achieving its goal of a ten percent reduction in Total Compensation.

For example, the City negotiators were unable to justify the budget figures that it provided to ALP in recent negotiation sessions as the City's calculation of Total Compensation for FY 2011- 2012 (Exhibit A). Nor were the City negotiators able to explain why, if ALP already gave a 10% concession last year, a comparison of the FY 2010 – 2011 (Exhibit B) Total Compensation with FY 2011 – 2012 (Exhibit A) reveals that the Total Compensation per FTE of ALP went up by 6%!

While our members see the very real impacts of budgetary concessions as a reduction in pay checks or their take home pay, the City refers to a number that it produces called "Total Compensation" for employees. The City's "Total Compensation" numbers include base salary, and a valuation assigned by the City to employee benefits and fringe. The City has used this number in the past two years to establish its target budgetary reductions. We have learned with the current negotiations that the City's calculation of "Total Compensation" for employees is opaque. Particularly, with regard to the "unfunded liability" for the pension plan and the retiree healthcare benefit, the "unfunded liability" includes costs that are discretionary and are not all "required," and more inappropriately also includes costs for employees no longer with the City and which cannot reasonably be called "compensation" to ALP members, nor to any other current employee. As a result of this larding of pension obligations to former employees upon current employee costs, the per current employee costs are grossly inflated in the City's documents.

When we inquired about this apparent attempt to inflate the cost of Total Compensation to us, the City negotiating team was also unable or unwilling to concede that a majority (approximately 60%) of the City's unfunded liability that the City attributes to the Total Compensation costs of each ALP member does not consist of costs associated with ALP members, but are City costs to pay benefits for City employees who no longer work for the City, i.e. retirees and deferred vested plan members. These amounts cannot under any fair definition, be called "compensation" to current City employees and they should be removed from the City's budget reduction requests from ALP members. This conclusion is

based on data provided in the December 2010 Cheiron Report on the Federated City Employees' Retirement System June 30, 2010 Actuarial Valuation, specifically Table V-1 on page 10 which contains the following data:

Actuarial Liabilities	
a. Members Currently Receiving Payments	\$1,418,794
b. Vested Terminated and Inactive Members	85,904
c. Active Members	1,005,660
d. Total Actuarial Liability	\$2,510,358

Dividing the amount of Actuarial Liability attributable to the Active Members (\$1,005,660) by the Total Actuarial Liability (\$2,510,358) leads to the conclusion that roughly only 40% of the total unfunded liability is attributable to Active Members. Thus, the total overall Total Compensation for our unit is inflated by the 60% that the City is paying on behalf of plan members who are no longer working for the City! This factor artificially drives up the dollar amount of base pay necessary to reach the City's goal of 10% of Total Compensation. ALP is willing to work with the City on achieving cost savings tied to a verifiable and fair calculation of "Total Compensation," i.e. costs that the City actually incurs for base salary and fringe benefits for ALP members. However, ALP objects to the mischaracterization of costs not attributable to ALP members, as somehow being part of the "Total Compensation" received by our members.

A fair calculation of the "unfunded liability" would lead to a much more equitable request for concessions from our association. Taking the amount shown on the "Federated Retirement" line item in the Total Compensation generated by the City for our bargaining unit for Fiscal Year 2011-2012 (Exhibit A) as \$2,083,443, and subtracting the amount of the City's normal cost, \$904,208.99<sup>1</sup>, the portion that represents the unfunded costs is **\$ 1,104,042.01**. Only 40% of this amount is attributable to the current workforce. Thus, the total dollar value of the UAAL attributable to the current working members of ALP is \$441,616.80.

City' Total Retirement Cost	28.34%	\$ 2,008,251.00
City Normal Cost	12.76%	\$ 904,208.99
City Unfunded Liability Cost (UAAL)	15.58%	<b>\$ 1,104,042.01</b>
Amount of UAAL (retired/deferred vested)	60%	\$ 662,425.21
Amount of UAAL (current)	40%	<b>\$ 441,616.80</b>

<sup>1</sup> Under Charter Section 1505, the City must pay 8/11 of the City's normal costs. The City cannot shift this cost to the employees.

It was not entirely clear whether the Total Retirement Cost of \$2,008,251.00 includes the City's contribution for Retiree Health and Dental Benefits. If it does the following calculations would result:

City' Total Retirement Cost	35.50%	\$2,008,251.00
City Normal Cost	12.76%	\$721,838.95
City Unfunded Liability Cost (UAAL)	15.58%	<b>\$881,367.62</b>
City Portion of Retiree Medical and Dental	7.16%	<b>\$405,044.43</b>
Amount of UAAL (retired/deferred vested)	60%	\$528,820.57
Amount of UAAL (current)	40%	<b>\$352,547.05</b>

Under these assumptions the total amount of the unfunded liability for active City employees represented by ALP for FY 2011-2012 would be **\$352,547.05**. We expect the City negotiators to explain their Retirement Cost figures and what they include if our assumptions are incorrect.

## 2. *City's Proposed Side Letters*

The membership of ALP has a different set of issues with regard to the City's Side Letters. Furthermore, we have heard the administration presentations and the Mayor's public pronouncements, much of which involve attempted unilateral changes by management to vested rights of employees. As lawyers we are aware of our vested rights as public employees. We stated the basis for our conclusions in our letter to the City Council dated February 10, 2011. Instead of acknowledging the consequences of the legal status of our rights, your negotiating team proffered side letters that attempt to obtain a waiver of these rights. . Your negotiating team is asking us to give up our vested rights in our pension benefits. As the California Supreme Court has stated that any changes to vested rights such as pension rights, which "result in disadvantage to employees should be accompanied by comparable new advantages." Without offering us reasonable offsetting benefits, the introduction of reductions of vested pension benefits is outside of the scope of bargaining, and any such reductions cannot be imposed upon us after impasse. We will not agree to give up our rights under the Meyers-Miliias-Brown Act with respect to these issues. Nor will we agree to any future negotiations over these vested rights where the City insists that it may unilaterally implement changes upon its declaration of impasse.

### **ALP's Proposal**

In an attempt to reach a comprehensive final agreement with the City, ALP offers its Package Proposal "A" attached and which is also discussed below.

We have made a very simple proposal to achieve the same 10% reduction that you accepted last year and valued at approximately \$900,000 by proposing to continue the same provisions that are in our June 15, 2010 Tentative Agreement. This \$900,000 value is more than enough to cover the **\$441,616.80 (or \$352,547.05)** of unfunded pension liability that is attributable to our bargaining unit.

The 10% concessions in Total Compensation, on the other hand, represent a pay cut to us that totals almost 13% in what we receive. If one adds the 11.19% in our contributions toward the normal cost of retirement benefits and our contribution to retire healthcare and dental benefits, it is clear that we are contributing over 24% of our pay toward meeting the outstanding retirement liability! We have been unable to find any public workers in the state that have made this level of concessions.

The City's bargaining team confirmed to us during negotiations that, unlike ALP members, other bargaining unit members have and will continue to receive step increases during current and future contract years. In addition, given that the City Council has approved a deal with Local 230 that includes 5% annual step increases for firefighters over four years, we believe that it is only equitable to allow our unit at least one year of 2.5% step increases with possible additional merit increases for our bargaining unit that has not seen a step or merit increase for several years now – despite having given our 10% one year earlier than Local 230. The City has been asking ALP members to give up far more in compensation than members of other bargaining units. As a result of this inequity, ALP desires some parity on this issue.

Given that the City wishes to conclude a package deal on the main economic issues that will affect this year's budget, we are willing to agree to further discussion of the following issues that are further discussed in the attached package:

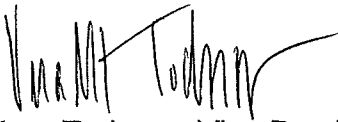
1. Retirement benefits and sick leave payout for current employees
2. Retirement benefits and sick leave payout for future employees
3. Grievance procedures

Our proposals for continued discussion of these issues properly state the legal parameters of those possible discussions.

Additionally, the Mayor's Budget Message includes a reduction of three positions

in the office of the City Attorney. When asked whether any of these positions are represented by ALP and what the reductions in force are, the City negotiating team could or would not respond. Given the potential for a reduction in force involving ALP represented employees, this writing constitutes notice to the City that ALP invokes its rights under the Meyers-Milias-Brown Act to negotiate the impact of any intended layoff of its represented employees including but not limited to workload of remaining employees, contracting out, and a layoff policy including but not limited to layoff process, reemployment rights, severance benefits, and waiver of the City's revolving door prohibitions for terminated employees.

This is a PACKAGE PROPOSAL. This PACKAGE PROPOSAL is submitted in an attempt to reach a settlement. Any City proposal not accepted in this package proposal is rejected. In the event this PACKAGE PROPOSAL is not accepted by the City of San Jose in its entirety, ALP reserves the right to modify, edit or amend any future proposals, including but not limited to, the effective dates of the specific changes.



Vera Todorov, Vice President  
For William Clark  
President  
Association of Legal Professionals

- c:     Marco Mercado, City Negotiation Team Member  
        Charles Sakai, City Negotiation Team Member  
        Vera Todorov, ALP Vice President  
        Brian Doyle, ALP Negotiation Team Member  
        Michael Dodson, ALP Negotiation Team Member

## **ALP PROPOSAL PACKAGE "A"**

### **TERM**

July 1, 2011 – June 30, 2012

### **WAGES AND MANDATORY UNPAID FURLOUGH DAYS**

The provisions of the Tentative Agreement dated June 10, 2010 are extended through June 30, 2012.

### **MANAGEMENT PERFORMANCE PROGRAM (MPP) – STEP INCREASE HYBRID**

The Management Performance Program is an annual employee evaluation system that provides eligible employees performance based wage increases.

Each employee who is not already at the top of the salary range may be eligible to receive a performance based increase for the rating period. The MPP also provides that employees may receive up to forty (40) hours of additional executive leave.

Please refer to City Policy Manual (CPM) Section 3.3.2 version in effect March 19, 2011 for additional information.

Separate and apart from the MPP, each employee in the classifications represented by ALP who is not already at the top of the salary range shall receive a 2.5% step increase on July 1, 2011.

### **VACATION SELLBACK**

The provisions of the Side Letter between the City and ALP dated December 14, 2010 regarding VACATION SELLBACK shall remain in effect through Calendar Year 2012.

#### **DISABILITY LEAVE SUPPLEMENT**

If required to be absent from work due to a work related illness, employees may receive a supplement which, when added to the Workers' Compensation Temporary Disability, equals 85% of the employees' base salary, up to a maximum of six (6) months (1,040 hours if used intermittently).

*Part-time and temporary employees **are not eligible** for this benefit.*

#### **RELEASE TIME**

All ALP members are exempt employees. ALP may designate bargaining unit representatives to be released for a reasonable amount of time from regular City duties to attend authorized meetings. Release time for bargaining unit representatives shall not be unreasonably denied. In the event the City Attorney believes that the use of release time is unreasonable, he or she shall request a meeting with the bargaining units representatives to discuss the reasonableness of the amount of the release time and the bargaining unit representatives shall discuss the reasonableness of the time and they shall together come to a reasonable decision.

#### **HOLIDAY CLOSURE**

The provisions of the Tentative Agreement dated June 15, 2010 between the City and ALP that relate to the HOLIDAY CLOSURE shall remain in effect.

#### **SUBSIDY FOR PUBLIC TRANSIT**

The provisions of the Tentative Agreement dated June 10, 2010 are extended through June 30, 2012.



## **ISSUES SUBJECT TO FURTHER DISCUSSION AND/OR NEGOTIATION**

### **1. RETIREMENT BENEFITS AND SICK LEAVE PAYOUT FOR CURRENT EMPLOYEES**

The Association of Legal Professionals maintains that the rights of current employees with regard to pension benefits, retiree healthcare benefits, Supplemental Retiree Benefit Reserve (SRBR) and sick leave payout upon retirement vested on the day that they were hired and are vested rights and are not within the scope of bargaining, nor are changes thereto within the City's ability to impose after impasse. In addition, ALP maintains that changes to the Sick Leave Payout Benefit of current employees would be illegal for other reasons including but not limited to breach of contract, *quantum meruit*, unjust enrichment, promissory estoppel, and age discrimination.

Without waiving the rights of any of the employees represented by ALP to continue to maintain that position and to retain their vested rights, ALP agrees that it will continue to discuss issues regarding these benefits with the City, including impact upon current employees of any proposed second or different tier of benefits to future employees, the City view of its legal authority to negotiate changes to these vested rights, as well as a possible opt-in to second tier benefits if established for new employees (at the employee's sole discretion).

### **2. RETIREMENT BENEFITS AND SICK LEAVE PAYOUT FOR FUTURE EMPLOYEES**

The City and the Association of Legal Professionals of San Jose (ALP) agree to continue to meet and confer on pension, retiree healthcare benefits, Supplemental Retiree Benefit Reserve (SRBR), and sick leave payout for future employees.

### **3. GRIEVANCE PROCEDURES**

ALP requests to negotiate the grievance process for allegations of violations of the MOA provisions and City rules and regulations governing the employment relationship to be included in the MOA.



**Association of Legal Professionals Salary and Fringe**

	General Fund	Other Funds	Total
Base Salary and Associated Fringe			
Base Payroll	\$4,547,575	\$807,753	\$5,355,328
Associated Fringe:			
Federated Retirement	\$1,705,344	\$302,907	\$2,008,251
Unemployment	\$63,851	\$11,341	\$75,192
Total Associated Fringe	\$1,769,195	\$314,248	\$2,083,443
Total Base and Associated Fringe	\$6,316,770	\$1,122,001	\$7,438,771
Cost Distribution (%)	85%	15%	100%
Cost of 1%			
1% Base Salary Only	\$45,476	\$8,078	\$53,553
1% Associated Fringe	\$17,692	\$3,142	\$20,834
<b>Total Cost of 1% Base/Assoc Fringe</b>	<b>\$63,168</b>	<b>\$11,220</b>	<b>\$74,388</b>
Non-Associated Fringe			
Health	\$357,346	\$73,052	\$430,398
Dental	\$35,041	\$4,466	\$39,507
Miscellaneous	\$91,728	\$16,330	\$108,058
Total Non-Associated Fringe	\$484,115	\$93,848	\$577,963
<b>GRAND TOTAL</b>	<b>\$6,800,885</b>	<b>\$1,215,849</b>	<b>\$8,016,734</b>
<b>TOTAL FTE</b>	<b>32.15</b>	<b>5.85</b>	<b>38.00</b>
<b>Average Cost Per FTE</b>		<b>\$</b>	<b>210,966.68</b>

Date: February 28, 2011  
Source: OMB ABS Report - Salary and Fringe  
Benefit Costs by Union Code & Fund for the 2011-  
2012 Base Budget

NOTE: Does not include Worker's Compensation Costs

City of San Jose  
March 3, 2011

EXHIBIT A

C-4  
3/29/10

**Fiscal Year 2010-2011**

**Base Budget**

**Association of Legal Professionals (311) Salary and Fringe**

	General Fund	Other Funds	Total
Base Salary and Associated Fringe			
Base Payroll	\$5,645,602	\$878,047	\$6,523,649
Associated Fringe:			
Federated Retirement	\$1,620,283	\$251,999	\$1,872,282
Police/Fire Retirement	\$0	\$0	\$0
Unemployment	\$42,901	\$6,873	\$49,574
Total Associated Fringe	\$1,663,184	\$258,672	\$1,921,856
Total Base and Associated Fringe	\$7,308,786	\$1,136,719	\$8,445,505
Cost Distribution (%)	87%	13%	100%
Cost of 1%			
1% Base Salary Only	\$56,456	\$8,780	\$65,236
1% Associated Fringe	\$16,632	\$2,587	\$19,219
<b>Total Cost of 1% Base/Assoc Fringe</b>	<b>\$73,088</b>	<b>\$11,367</b>	<b>\$84,455</b>
Non-Associated Fringe			
Health	\$428,562	\$72,891	\$501,453
Dental	\$46,602	\$7,752	\$54,354
Miscellaneous	\$108,426	\$16,815	\$125,241
Total Non-Associated Fringe	\$583,590	\$97,458	\$681,048
<b>GRAND TOTAL</b>	<b>\$7,892,376</b>	<b>\$1,234,177</b>	<b>\$9,126,553</b>
<b>Cost of 1% Total Compensation</b>			<b>\$91,266</b>
<b>TOTAL FTE</b>	<b>39.90</b>	<b>6.10</b>	<b>46.00</b>
<b>Average Cost Per FTE</b>			<b>198,403</b>

Date: February 27, 2010

Source: OMB ABS Report - Salary and Fringe

Benefit Costs by Union Code & Fund for the 2010-2011 Base Budget

NOTE: Does not include Worker's Compensation Costs

EXHIBIT B